

Message Text

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DRAFTED BY L/EUR:DHSMALL:MFM

APPROVED BY L:MBFELDMAN

L/EB - MR. WILLIS

EB/IFB - MR. WITHERELL

EB/ITP/EWT - MR. PRACHT

EUR/CE - MR. BECKER

TREASURY - MR. O'CONNEL (SUBS)

JUSTICE - MR. GOLDKLANG (INFORMED)

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FM SECSTATE WASHDC

TO AMEMBASSY LONDON IMMEDIATE

INFO USMISSION BERLIN

AMEMBASSY BONN

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E.O. 11652: N/A

TAGS:EFIN, GE, UK

SUBJ: BANK LENDING TO EAST GERMANY

REF: LONDON 7670

1. REGRET DEPT. UNABLE TO PROVIDE RESPONSE WITHIN TIME REQUESTED. JOHNSON ACT (18 USC SECTION 955) PROHIBITS CERTAIN KINDS OF LOANS AND OTHER TRANSACTIONS WITH A GOVERNMENT IN DEFAULT IN PAYMENT OF ITS OBLIGATIONS TO THE US. APPLICABILITY TO A PARTICULAR SITUATION NOT ALWAYS CLEAR.

2. JOHNSON ACT WAS CONSIDERED APPLICABLE TO EAST GERMANY ON THEORY THAT, AS SOVIET ZONE OF OCCUPATION, IT WAS COVERED
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BY SOVIET UNION'S STATE OF DEFAULT. WHILE THAT THEORY NO

LONGER VIABLE, THERE ARE DEBTS OF THE GERMAN REICH TO THE US GOVERNMENT WHICH TREASURY CONSIDERS TO BE IN DEFAULT. WHETHER GDR IS CONSIDERED PRESENTLY IN DEFAULT WITH RESPECT TO THOSE DEBTS OF THE REICH IS NOT ENTIRELY CLEAR AND IS BEING LOOKED INTO.

3. BANK, HOWEVER, MIGHT BE ABLE TO OBTAIN SATISFACTORY ANSWER ON JOHNSON ACT IN RELATION TO ITS LONDON OFFICE AND THE PARTICULAR TRANSACTION PLANNED WITHOUT AWAITING CLARIFICATION OF GDR DEFAULT ISSUE. JOHNSON ACT HAS BEEN INTERPRETED BY SERIES OF ATTORNEY GENERAL'S OPINIONS (SEE: 37 OP.A.GEN 505 (L934); 39 OP.A.GEN. 398 (L939); 42 OP.A.GEN. NO. 15 (1963); AND 42 OP.A.GEN. NO. 27 (L967). ONE, IN 1963, DEALS WITH NON-APPLICABILITY OF ACT TO NORMAL EXPORT CREDITS AND CERTAIN OTHER KINDS OF CREDITS; ANOTHER, IN 1963, TREATS EXEMPTION OF TRANSACTIONS OF FOREIGN SUBSIDIARIES AND BRANCHES OF US BANKS WHERE FOREIGN SOURCES AND NOT US CAPITAL MARKET ARE DRAWN ON FOR THE LOAN. BANK MAY WISH TO HAVE ITS LAWYERS CHECK INTO THESE ASPECTS OF JOHNSON ACT, SINCE WE NOT IN POSITION TO PROVIDE SUCH LEGAL ADVICE. SISCO

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